

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Sandra Lee Smith O/B/O "B.L.S.",

Plaintiff,

v.

Nancy A. Berryhill
Commissioner of Social Security,

Defendant.

16-CV-203
Decision and Order

On March 8, 2016, the plaintiff commenced this action. Docket Item 1.

On December 5, 2016, this Court referred this case to United States Magistrate Judge Leslie G. Foschio for all proceedings under 28 U.S.C. § 636(b)(1)(B). Docket Item 14.

On November 28, 2016, the plaintiff moved for judgment on the pleadings or, in the alternative, to remand for further proceedings, Docket Item 13; on January 27, 2017, the defendant responded and cross-moved for judgment on the pleadings, Docket Item 15; and on February 17, 2017, the plaintiff replied, Docket Item 16. On April 18, 2018, Judge Foschio issued a Report and Recommendation ("R&R") finding that the plaintiff's motion should be granted and that the defendant's motion should be denied. Docket Item 17. The parties did not object to the R&R, and the time to do so now has expired. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a de novo review of those portions of a magistrate judge's recommendation to which a party objects. 28 U.S.C. § 636(b)(1);

Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. See *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

Although not required to do so in light of the above, this Court nevertheless has reviewed Judge Foschio's R&R as well as the parties' submissions to him. Based on that review and the absence of any objections, the Court accepts and adopts Judge Foschio's recommendation to grant the plaintiff's motion and deny the defendant's cross-motion.

For the reasons stated above and in the R&R, the plaintiff's motion for judgment on the pleadings, Docket Item 13, is GRANTED; the defendant's motion for judgment on the pleadings, Docket Item 15, is DENIED. The decision of the Commissioner is REVERSED; and the matter is REMANDED consistent with the R&R for the calculation of benefits. The Clerk of the Court shall close the file.

SO ORDERED.

Dated: July 12, 2018
Buffalo, New York

s/ Lawrence J. Vilardo
LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE